

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ERNEST MEDINA,

)

8:14CV349

)

Plaintiff,

)

)

v.

)

**MEMORANDUM  
AND ORDER**

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TITLE 5 USC 552,

)

)

Defendant.

)

This matter is before the court on correspondence (Filing No. [10](#)) from the business manager at Plaintiff Ernest Medina's current place of incarceration. She set forth in her correspondence that Medina has no funds in his inmate trust account statement with which to pay the initial partial filing fee.

As set forth in [28 U.S.C. § 1915\(b\)\(4\)](#), "[i]n no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." When the prisoner is unable to pay the initial partial filing fee due to a lack of funds, the requirement that the initial partial filing fee will be paid at the outset of the case is suspended. *See Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 957 n. 9 (D. Neb. 2001). Instead, "the whole of the . . . filing fees are to be collected and paid by the installment method contained in § 1915(b)(2)." *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). This matter will therefore proceed without payment of the initial partial filing fee as set forth below.

IT IS THEREFORE ORDERED that:

1. The filing fee shall be collected and remitted, as funds exist, in the manner set forth in [28 U.S.C. § 1915\(b\)\(2\)](#). Until the full filing fee of \$350.00 is paid, the prisoner shall be obligated to pay, and the agency having custody of the prisoner

shall forward to the Clerk of Court, 20 percent of the preceding month's income in such months as the account exceeds \$10.00.

2. The Clerk of Court shall serve a copy of this order on the appropriate financial officer for Plaintiff's current institution.

DATED this 30th day of December, 2014.

BY THE COURT:

*s/ John M. Gerrard*  
United States District Judge

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